



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: HOfs15010067
[REDACTED]

JAMAL L. SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,

v.

PMR COMPANIES,
THE CROSSING AT 5810 APARTMENTS,
Respondents.

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Executive Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following finding with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice occurred in this instance. A Charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On January 26, 2015, [REDACTED] ("Complainant") filed a Complaint with the Commission against PMR Companies and The Crossing at 5810 Apartment ("Respondents") alleging discrimination on the basis of familial status in violation of the Indiana Fair Housing Act (Ind. Code § 22-9.5, *et seq.*) and the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*). The Commission therefore, has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. All parties have been interviewed and have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Executive Director now finds the following:

There are several issues pending before the Commission. The first issue before the Commission is whether Respondent threatened to evict Complainant because of her familial status. In order to prevail, Complainant must show that: 1) she is a member of a protected class; 2) she was qualified, ready, willing and able to continue her tenancy with Respondent in a manner consistent with its reasonable terms and conditions; 3) she was threatened with eviction; and 4) she was treated less favorably than similarly-situated individuals without children under similar circumstances. It is evident that Complainant is a member of a protected class because she resides with two children under the age of 18; however, evidence shows that she was unwilling to continue her tenancy in a manner consistent with Respondent's reasonable terms and



conditions. Moreover, there is insufficient evidence to show that Respondent threatened Complainant with eviction because of her familial status.

By way of background, Complainant first signed a lease with Respondent on or about December 1, 2014.¹ At all times relevant to the Complaint, the lease provided that [REDACTED], Complainant's son, would be residing in the premises with Complainant in a one-bedroom, 650 square foot unit. Nonetheless, Complainant failed to meet Respondent's legitimate tenancy expectations. Specifically, during her tenure with Respondent, Respondent received noise complaints about Complainant. Complainant admits that during the course of a conversation with Respondent's leasing agent, she informed Respondent that her three-year old daughter lived in the unit along with her and her son. Further, Complainant admitted that she failed to put her daughter on the lease because she "did not feel that [she] needed to notify" Respondent. While Respondent provided email correspondence dated July 17, 2015 indicating that it was filing eviction proceedings against Complainant due to the non-payment of rent, a search of the mycase.in.gov/ database did not reveal a record of such filing.

Despite Complainant's assertions, there is insufficient evidence to support her claims. Rather, evidence shows and Complainant admits that she housed an unauthorized tenant in her unit without permission in contravention of Respondent's reasonable policies and procedures. Moreover, Complainant admits that her children were running in the hallway on occasion in contravention of policy and procedure. Further, while Respondent provided correspondence asserting that it was in the process of filing eviction proceedings against Complainant for the non-payment of rent, no evidence has been provided or uncovered to show that such filing occurred. As such, there is no reasonable cause to believe that a discriminatory practice occurred as alleged. Complainant may appeal the no reasonable cause finding regarding the first issue to the full Commission. 910 IAC 1-3-2(g). The written appeal must be filed with the Commission within fifteen (15) days of receipt of this Notice and must include any new and additional evidence relied on by Complainant to support the appeal.

Similarly, the second issue before the Commission is whether Respondent subjected Complainant to discriminatory terms and conditions because of their familial status. This correlates to the third and forth issue before the Commission: whether Respondent subjected Complainant to discriminatory statements and whether Respondent subjected Complainant to unlawful steering. Simply stated, reasonable cause exists to believe that a discriminatory practice occurred as alleged.

At all times relevant to the Complaint, Respondent maintained the following occupancy standard: "two people maximum per bedroom. (Exception: Children 24 months of age or under unless otherwise dictated by Federal, State, or Local regulations)." Respondent asserts that on

¹ While the lease includes dates from December 2004 and November 2005, this appears to be a typographical error as the date of lease contract is December 1, 2014.

or about December 8, 2014, during a conversation with the community manager, Complainant admitted that two adults and three children lived in her one-bedroom, 650 square foot unit. While Complainant admits that she resided in the unit with her son and unauthorized three-year-old daughter, she denies residing with another adult or child. Moreover, Respondent's leasing agent admits that Complainant informed her that she and her two children were living in the apartment while the eldest child visited the premises. The leasing agent further admitted that she told Complainant that "she should move into a two-bedroom apartment if she is going to have three people" in the unit. Evidence shows that Complainant applied for a two-bedroom unit per Respondent's request, but did not qualify as the rent for the one-bedroom unit was \$499.00 a month, while the two-bedroom would cost \$599.00 per month.

Despite Respondent's assertions, there is sufficient evidence to believe that a discriminatory practice occurred as alleged. While Complainant should have declared her three-year old daughter on the lease, Respondent's occupancy policy is in contravention of the housing laws. As a general rule, factors such as the size of the bedrooms and the overall unit, the age of the children, the unit configuration, and other criteria must be taken into effect before imposing occupancy standards. In this instance, it is unreasonable to assert that two children, one under the age of five and the other under the age of ten, along with one adult cannot live in a 650-square foot residence. Further, Respondent steered Complainant and her children to a two-bedroom, 808-square foot residence for which Complainant did not qualify. Simply stated, Respondent's occupancy policy has the effect of requiring all children under the age of 2 to have a separate bedroom which has a disproportionate and chilling effect on families with children. As such and based upon the aforementioned, reasonable cause exists to believe that violations of the laws occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Fair Housing Act, the Indiana Civil Rights Law, as amended, occurred in the aforementioned case. As permitted by 910 IAC 2-6-6(h), Respondents, Complainant, or an aggrieved person on whose behalf the Complaint is filed may elect to have the claims asserted in a civil action under Ind. Code § 22-9.5-6-12 in lieu of an administrative proceeding under 910 IAC 2-7. In the event the parties seek to pursue such an election, it must be made not later than twenty (20) days after the receipt of service of this Notice of Finding and Charge. The notice of any such election must be filed with the Commission and served on the Director, the Respondents, and Complainant in accordance with 910 IAC 2-6-6. If such an election is not timely made, the administrative proceedings initiated by the Charge will continue as scheduled. 910 IAC 2-6-6. Moreover, the Respondent shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. [REDACTED] and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing. If at any time following service of this charge Respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondent must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

September 2, 2015

Date



Jamal L. Smith
Executive Director
Indiana Civil Rights Commission